In the

Supreme Court of the United States

October Term, 1948

No. 216

216

ALGOMA PLYWOOD AND VENEER CO.,
Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD,
Respondent.

On Certiorari to the Supreme Court of the State of Wisconsin

Brief of Algoma Plywood and Veneer Co., Petitioner

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I.

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II.

Opinions of Courts Below

The opinion of the Wisconsin Supreme Court is reported in 252 Wis. 549, 32 N. W. 2d 417.

The opinion of the Circuit Court of Kewaunee County, Wisconsin, is not officially reported, but appears in 14 Labor Cases (C. C. H.) No. 64,253.

III.

Jurisdiction

1. The date of the final judgment to be reviewed is May 11, 1948. The mandate was issued May 11, 1948.

2. The statutory provision which is believed to sustain the jurisdiction of the Supreme Court is Sec. 237 (b) of the Judicial Code (28 U. S. C. §344(b)), which authorizes this court to review the final judgment of the highest court of a State where there is drawn in question the validity of a State statute on the ground of its being repugnant to a federal statute.

IV.

Statement of the Case

Algoma Plywood & Veneer Co. is engaged in the manufacture of plywood and veneer in Kewaunee County, Wisconsin. Well over 95 per cent of its business is in interstate commerce (R. 24). Following a bargaining election conducted in 1942 by the National Labor Relations Board at the Algoma plant, Local 1521 of the Carpenters and Joiners Union (A. F. L.) was certified by the National Labor Relations Board as bargaining agent and the Company thereafter dealt with it as the bargaining representative of all production employees (R. 19, 56).

In 1943 the Company and the Union negotiated a contract containing a provision requiring members of the Union to maintain their membership as a condition of employment, without an election conducted by the Wisconsin Employment Relations Board (R. 19-20, 56). The

same provision appeared in succeeding contracts. A Union member, Moreau, failed to pay his dues and at the Union's demand was discharged by the Company on January 14, 1947 (R. 24, 25, 30, 31). Moreau filed a complaint against the Company with the Wisconsin Employment Relations Board (R. 12), and the Company was charged by the Board with a violation of Sec. 111.06(1)(c) of the Wisconsin Statutes, the applicable portions of which provide:

> "It shall be an unfair labor practice for an employer * * * to encourage * * * membership in any labor organization * * * by discrimination in regard to hiring, tenure or other terms or conditions of employment; provided, that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit, where at least two-thirds of such employees voting * * * shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board. * * *"

The Wisconsin Employment Relations Board found that the Company had committed an unfair labor practice in violation of the state statute and ordered the Company to reinstate Moreau and to cease and desist from giving any effect to the maintenance of membership provision of its labor contract without a two-thirds vote of its employees (R. 7-10).

The Company then appealed to, and the Wisconsin Employment Relations Board filed a petition for enforcement with the Circuit Court of Kewaunee County, Wisconsin, where both the Company and the Union contended that the State Board was without jurisdiction to deal with unfair labor practice charges against the Company (R. 46).

since not only did Sec. 10 (a) of the National Labor Relations Act (29 U. S. C. A. Sec. 160), prior to 1947 amendment, make the National Board's jurisdiction "exclusive," but also the National Board had already pre-empted the field of the Company's labor relations by conducting a certification proceeding out of which the labor contract and maintenance of membership provision evolved.

The Circuit Court decided the federal question against the Company and the Union (R. 46-47) and its judgment on this aspect of the case was affirmed by the Wisconsin Supreme Court on May 11, 1948 (R. 55 et seq.).

Another point in the case was whether the Company should be required to reinstate Moreau with or without back pay. This question is not involved upon this review, but will stand or fall upon the outcome of the jurisdictional question.

V.

Specification of Errors

1. The court below erred in holding that the State Board may take jurisdiction of an unfair labor practice case against an employer in interstate commerce, in spite of Sec. 10 (a) of the National Labor Relations Act which makes the National Board's jurisdiction in this field exclusive. See 29 U. S. C. A. 160 prior to 1947 amendment.

2. The court below erred in holding that the State law was not repugnant to the National law, when the state law makes a maintenance of membership provision illegal without a two-thirds vote of employees, whereas the National Act provides that nothing in that Act shall preclude

an employer from entering into a contract containing such a provision with the union representing his employees.

3. The court below erred in holding that the representation proceeding conducted at the Company's plant by the National Board did not oust the State Board of jurisdiction over the Company's labor management relations, at least in so far as the validity of the contract negotiated between the Company and the Union is concerned.

VI.

ARGUMENT

1. Sec. 10(a) of the National Labor Relations Act, which makes the National Board's power to prevent unfair labor practices exclusive (29 U. S. C. A. sec. 160), makes inapplicable to employers in interstate commerce any state law dealing with employer unfair labor practices.

In this case the employer is charged under state law with the commission of an unfair labor practice, which was not an unfair labor practice under the then applicable provisions of the National Labor Relations Act. The alleged unfair labor practice was the employer's adherence to a maintenance of membership provision in its labor contract, a practice which clearly was not an unfair labor practice under the National Labor Relations Act. Thus, the effect of the State Board's order in this case, requiring the employer to cease and desist from observing this provision of its contract, is to encroach upon the domain of the National Board whose jurisdiction is expressly made *exclusive* by Act of Congress.

The application of Section 10 (a) of the National Labor Relations Act to state laws providing for unfair labor practices of employers has not been passed upon by this court. Without any qualification, that section confers *exclusive* jurisdiction upon the National Labor Relations Board in matters involving unfair labor practices of employers whose activities affect interstate commerce. The exclusive character of the power conferred upon the Board is elaborated by that section expressly to exclude any other means of adjustment or prevention which may be established by agreement, code, *law or otherwise*. No qualification of what type of agreement, code, or law is made and, hence, it must be assumed that Congress intended any such means whether federal, state or otherwise.

The Wisconsin Supreme Court interpreted this section nearly ten years ago in its decision in *Wisconsin Labor Relations Board v. Fred Rueping Leather Co.*, 228 Wis. 473, 279 N. W. 673, (1938) and interpolated therein a restriction upon the exclusive character of the power conferred upon the Board to other federal boards and agencies only, basing its conclusion on the assumption that the clause purported to deal not with the scope of the act but only with the powers and authority of the National Board with respect to its administration. The Wisconsin Supreme Court bases its conclusion upon section 14 (29 U. S. C. A. sec. 164), specifying other federal acts which are to be subordinated to the provisions of the National Labor Relations Act. It also substantiated this view by reference to that part of section 8(3) (29 U. S. C. A. sec. 158), of the National Labor Relations Act which specifies that no provisions of the National Industrial Recovery Act and no other statute of the United States shall preclude certain

acts authorized thereby. It is submitted that this resort to other less broad and sweeping provisions is unjustified except for the purpose of resolving some ambiguity. It is claimed that there is no ambiguity in the provisions of section 10 (a).

Had Congress intended to limit the broad and sweeping exclusive powers conferred upon the National Board it might have done so as it did in the very sections to which the Wisconsin Supreme Court refers. It is therefore submitted that reference to these sections more appropriately supports the argument that this clause was intended to be broad and unlimited and that the limitation used elsewhere was not intended here.

There is such a sound purpose in conferring upon the National Board exclusive power to prevent unfair labor practices by employers engaged in activities affecting interstate commerce that there is no justification in seeking grounds for circumscribing it. Congress no doubt intended that uniform rules and policies should be applied to all competing employers regardless of their location in the United States and that one should not be subjected to discrimination as against others by virtue of any different policies being applied by the respective states.

The United States Supreme Court in *Bethlehem Steel Company v. New York State Labor Relations Board*, 330 U. S. 767, 67 Sup. Ct. 1026, —L. ed. — (1947) held that under section 9 (29 U. S. C. A. sec. 159), of the Act relating to determination of bargaining units, the powers of the National Board were exclusive where the employer's activities affected commerce and the National Board had assumed jurisdiction of the labor relations of the parties in general. This court pointed out that there was nothing in that

portion of the Act which indicated whether it was intended to exclude state action and relied upon an implication of exclusion. Here it is unnecessary to find by implication an intention to exclude state action; the act provides that the authority of the National Board is *exclusive*.

2. Sec. 111.06 of Wisconsin Statutes was repugnant to Sec. 8(3) of the National Labor Relations Act and was therefore invalid and cannot be enforced against an employer whose activities affect interstate commerce.

Sec. 8 of N. L. R. A. (29 U. S. C. A. sec. 158) defines employer unfair labor practices and provides at subsection (3):

> "Provided that nothing in this Act * * *, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of employment membership therein * * *."

Sec. 111.06(1) of the Wisconsin Statutes sets forth employer unfair labor practices and at subsection (c) 1 provides:

> "Provided, that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit, where at least two thirds of such employees voting * * * shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board."

Thus, the National Act says that the employer and union shall be free to enter into an all-union contract,

whereas the State Act says that they can enter into such a contract only after a referendum has been held by the State Board in which at least two-thirds of the employees signify their approval.

To illustrate the inconsistency, let us consider actual collective bargaining negotiations between a Wisconsin employer engaged in interstate commerce and a union which has been certified as the bargaining agent by the National Board. The Union requests the inclusion in the contract of a maintenance of membership provision. The employer is then placed in this dilemma:

(a) If he says "yes" (which is what the employer said in this case), then he subjects himself to possible charges that he has committed an unfair labor practice under State law, since no referendum has been conducted by the State Board.

(b) If he says "not unless the State Board conducts a referendum and at least two-thirds of the men approve," then he subjects himself to charges of "refusing to bargain" under the National Act, and the Union may go directly before the National Board and secure an order directing the employer to cease and desist from refusing to bargain.

The National Board would consider such a refusal on the part of an employer to be an unfair labor practice, because there is nothing in the National Act which permits an employer to refuse to bargain on such a subject. On the contrary, the National Act contains an express recognition of such a union security provision.

See: *Eppinger & Russell Co.* (1944) 56 N. L. R. B. 1259

Tampa Electric Co. (1944) 56 N. L. R. B. 1270

We submit that an employer should not be placed in such a dilemma by the existence of State and National laws which do not coincide. If the employer in this case had taken the other horn of the dilemma and refused to bargain with the Union on a union security provision without a state-conducted election, the employer would in all probability have been found by the National Board to have committed a violation of the National Act. This same question would then be presented to this Court in a different way. The question would then be: Is the existence of the state requirement of a referendum a valid defense for an employer who is charged with a refusal to bargain under the National Act?

In this case the employer chose the alternative which would best preserve harmony in his plant. Rather than become involved in a dispute with the Union, the employer chose the course which led to litigation with the State Board.

In whatever way this question comes before this court, however, the conflict between the State and National Acts is apparent. In the event of conflict the State Act must yield.

In *Allen Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154 (1942) this court held that the State Act could properly operate in the field of preventing unfair labor practices by *employees*, because the National Act did not attempt to regulate that field. The court added this significant qualification, at p. 751:

> "If the order of the State Board * * * caused a forfeiture of collective bargaining rights, a distinctly different question would arise."

Now we have a case where the State Board's order does cause "a forfeiture of collective bargaining rights," since it requires the employer to cease and desist from observing the maintenance of membership provision of its contract with the union until a referendum has been conducted by the State Board and the requisite number of employees approve it. (R. 9)

In *Hill v. Florida*, 325 U. S. 538, 65 S. Ct. 1373, 89 L. ed. 1782 (1945) this court struck down a state statute requiring unions and business agents to secure licenses or permits before functioning as bargaining agents. This law was held to interfere with the right granted to employees by the National Act to freely choose their bargaining agent.

By the same token in this case, the union's right to bargain collectively with the employer, given to it by the National Act, has been circumscribed by the State Act which requires that the State Board shall first conduct a referendum and two-thirds of the employees must consent, before the parties can bargain collectively on the subject of Union Security.

The Wisconsin Supreme Court in its opinion on the case now here for review states:

> "We refrain from expressing any opinion as to the extent to which it does oust the state board in the field that might be regarded as collective bargaining. In other words the question reserved by the United States Supreme Court in the *Allen Bradley* Case as to the consequences there had the Board's order effected a forfeiture of collective bargaining rights will not be discussed because it is not involved."

If, as here, an employer is subject to the National Act and the National Board under that Act has designated the

bargaining agent and the employer is required before he negotiates under that Act to meet more restrictive provisions of a State Law how can it be denied that the State Act works any the less a forfeiture of collective bargaining rights than was presented in the Florida licensing case? It is submitted that the effect of the more restrictive provisions of the State Act works a forfeiture of collective bargaining rights. The dilemma which the employer faced here very graphically illustrates the point.

In *Hill v. Florida*, 325 U. S. 528, the court points out that the declared purpose of the Wagner Act was to encourage collective bargaining and to assure "full freedom" in the selection of bargaining representatives. This guarantee of "full freedom" was declared necessary for the purpose of "negotiating the terms and conditions of their employment." As this court said: "Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments.'" There this court said that the state law might prevent an agent from doing that which Congress permitted him to do. The same problem is presented here. The Wisconsin Act sets up a "varied and * * * conflicting" provision and limits the purpose for which the Wagner Act was enacted. Under the Wagner Act those things constituting unfair labor practices were defined and excluded therefrom was the provision of the contract now before this court.

The question of the repugnancy of Section 111.06 of the State Act to Section 8(3) of the National Act was considered in *International Brotherhood of Electrical Workers v. Wisconsin Employment Relations Board*, 245 Wis. 532, 15 N. W. 2d 823 (1944), where the Wisconsin Supreme

Court stated that it was unable to see any conflict of policy between the State and National Acts with respect to union security provisions. It was admitted that the National Act permitted such an agreement when negotiated with a majority representative of employees, whereas the State Act permitted such an agreement only where a referendum had been held and two-thirds of the employees specifically voted in favor thereof. The court says:

> "The policy is the same in both acts. The method by which the bargaining agent is chosen differs but that does not constitute a difference in policy. If in a particular case the National Labor Relations Board takes jurisdiction, of course its determination is superior in legal effect to that of the determination of the State Board, if there is a conflict. In this case the national board having declined to take jurisdiction, there is no conflict in policy or method."

The court treated the question of whether there was a conflict as depending upon whether the National Board had actually taken jurisdiction of the specific complaint then before the State Board. The matter was again considered in *International Brotherhood of Paper Makers v. Wisconsin Employment Relations Board*, 249 Wis. 362, 24 N. W. 2d 672 (1946), where the court compared the National and State Acts in dealing with union security provisions, and said:

> "We are utterly unable to see that there is any conflict between these two provisions."

We submit that where one law permits a union security provision without consent of the employees and the other requires the express consent of 66-2/3% or more of the

employees, there is at least a conflict in policy. It is not infrequent that a majority of the employees desire such a provision but less than 66-2/3% thereof do. The fact that there is a conflict between the two provisions is demonstrated by the present case. It is not denied that tested by the National Act, the union security provision of the contract was valid and enforceable, that the employee discharged pursuant to its provisions was properly discharged and, hence, the employer was not guilty of an unfair labor practice. On the other hand, under the Wisconsin Statute the Wisconsin Court held that the clause, tested by the State Act, was invalid and hence the employer was guilty of an unfair labor practice under the State Law in discharging the employee pursuant to the provisions of a contract negotiated with the duly appointed bargaining agent designated by the National Board.

In the foregoing two cases, the Wisconsin court construes section 8(3) to mean that since the union security provision thereof was included in a proviso, it granted no right but only removed impediments to the making of such an agreement under any federal law or regulation. Whether the Union Security clause was contained in a proviso removing impediments, or whether it was specifically guaranteed, is not of particular importance here. If, as this court held in *Bethlehem Steel Company v. New York State Labor Relations Board*, 330 U. S. 767, the identical and non-conflicting provisions of a state act must yield, then certainly a policy conflict, as indicated by a comparison of the union security clauses of the Wisconsin and National Acts, requires that the State Act must yield.

In determining that the proviso contained in section 8(3) conferred no rights but merely removed an impedi-

ment the Wisconsin Court turned to the Senate Reports on the ground that it was well settled that committee reports may be consulted to ascertain the intent of Congress. Whether a court is permitted to turn to legislative committee reports for interpretation depends upon whether or not the meaning of the legislation is doubtful or obscure and the courts will not turn to those reports unless there is some ambiguity in the act itself. The Wisconsin court without expressly finding any doubt or obscurity therein, but citing *Wright v. Vinton Mountain Trust Bank*, 300 U. S. 440, 57 S. Ct. 556, 81 L. ed. 736 (1936), proceeded to considered the Senate Report. This authority upon that subject says:

> "Since the language of the act is not free from doubt in the particulars mentioned, we are justified in seeking enlightenment from reports of Congressional committees and explanations given on the floor of the Senate and House by those in charge of the measure."

We submit that there was no occasion for turning to a committee report in dealing with section 8(3) of the National Labor Relations Act. The policy there enunciated was clear. We further submit that it is sufficient to show a conflict *in policy* in the application of the two acts to the case at hand. This court clearly said in *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, that even though there was no conflict between the language of the state and national acts, no conflict of policy would be permitted. Hence, it is clear that the Wisconsin Supreme Court erred in not following the rule of the *Bethlehem Steel Co. case*, and in applying a conflicting state policy to Algoma Plywood & Veneer Company.

In considering the decisions of the U. S. Supreme Court in *Hill v. Florida*, 325 U. S. 528, and *Alabama State Federation of Labor v. MacAdory*, 325 U. S. 450, 65 S. Ct. 1384, 89 L. ed. 1725, (1945) the Wisconsin Supreme Court says:

> "Every rule laid down in a decision of the United States supreme court as we understand it is to be limited as applying only to the particular facts on which it is based, and no case of that court is called to our attention that involves a situation like that involved herein." *International Union vs. Wisconsin Employment Relations Board*, 250 Wis. 550, 28 N. W. 2d 254 (1947).

With this approach the Wisconsin Court reviewed this court's decision in the *Bethlehem Steel Co. case*. This gives too restricted meaning to the effect of decisions of the United States Supreme Court upon questions involving the constitution of the United States and the laws of Congress made in pursuanee thereof. The Wisconsin Court confines the effect of the U. S. Supreme Court's decision to precise sets of facts rather than points of law at issue. We submit that the principle adopted in *Chesapeake & Ohio RR. Co. v. Martin*, 283 U. S. 209, 51 S. Ct. 453, 75 L. ed. 983 (1931) and *Provident Institution v. Massachusetts*, 6 Wall (U. S.) 611, 18 L. ed. 907 (1868) extends further than this.

3. The effect of the National Labor Relations Board conducting an election at the Algoma Plant and certifying the Union as the bargaining agent, was to oust the State Board of jurisdiction over the labor relations of the parties.

In *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, this court held that a State Board could not operate in the field of labor relations of the parties where the National Board had asserted its jurisdiction over the industry in which the employer was engaged. At p. 776 appears this language:

> "The federal board has jurisdiction of the industry in which these particular employers are engaged and has asserted control of their labor relations in general. It asserts, and rightfully so, under our decision in the *Packard* case, supra, its power to decide whether these foremen may constitute themselves a bargaining unit. We do not believe this leaves room for the operation of the state authority asserted."

Thus, even though the State Board functioned in a way which was consistent with the policies of the National Board, under a state act consistent with the National Act, this court has held that a State Board may not conduct representation proceedings in an industry engaged in activities affecting interstate commerce.

So here, the National Board took jurisdiction over the labor relations of the company and the union in this case by certifying the Union as bargaining agent (R. 19). In the collective bargaining between the parties which followed that certification, the State Board may not interfere. By attempting to apply the policy of the Wisconsin Act in

this case the Wisconsin court says in effect that an employer may not negotiate a union security agreement, although expressly permitted so to do by the National Act, without complying with the State's more restrictive provisions, and if unable to meet its tests, that it may then not incorporate certain provisions in a collective bargaining contract although under the National Act they would be recognized as valid without complying with such requirements. This is clearly a restriction and an interference with the freedom of collective bargaining under the policy established by the National Act contemplated by the decisions of this court.

The Wisconsin court misapplied the United States Supreme Court's decision in the *Bethlehem Steel Co.* Case. At the outset the Wisconsin Court said that it is "again confronted with a question of delicacy and difficulty concerning 'the delimitation of the power of the state and the federal government over a matter which is subject to some extent to their concurrent jurisdiction.'" (R. 58) This court clearly buried the theory of concurrent jurisdiction in those situations in which both the federal and state statutes have laid hold of the same relationship for regulation and concluded that to recognize the principle would either be productive of useless action or mischievous conflict. Recognition of the states' jurisdiction in *Allen Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, was not based upon concurrent jurisdiction but upon a lack of assertion of any jurisdiction on the part of the federal power with respect to unfair labor practices of *employees*. The Wisconsin Court appraised the effect of the *Bethlehem* Case in *International Union v. Wisconsin Employment Relations Board*, 250 Wis. 550, 28 N. W. 2d 254,

stating that the National Board had declined to authorize the formation of a foremen's union when that union applied to the National Labor Relations Board to form a unit. The facts stated in the report of the *Bethlehem* Case do not indicate that the foremen had applied to the National Board. The most that is said on this subject is that the foremen applied to the state board "* * * at a time when their desire to organize was frustrated by the policy of the National Board * * *." Under this misunderstanding the Wisconsin court said that the National Board's declination was an exercise of its jurisdiction just as much as granting the application would have been and that the principles enunciated in the *Bethlehem* Case therefore were restricted to those situations in which the identical dispute or matter had been presented to the federal agency.

Notwithstanding what this court said in the *Bethlehem Steel Co.* Case, the Wisconsin court continues to apply the principle enunciated by it in *International Brotherhood of Electrical Workers v. W. E. R. B.*, 245 Wis. 532, 15 N. W. 2d 823, in which it said:

> "When the National Labor Relations Board has acted in a particular case, the question of whether there is a conflict between the two jurisdictions is to be determined of course by the provisions of these acts * * *. If no proceeding is had under the National Labor Relations Act, no conflict of jurisdiction can arise. This matter was fully discussed in the *Rueping L. Co.* Case already referred to. *The National Labor Relations Board having never taken jurisdiction to certify the name of a bargaining agent, the state board could entertain proceedings relating to violations of state law. In so doing there was under such circumstance no conflict of jurisdiction.* Not every labor dispute arises to

such dignity that it impedes and obstructs interstate commerce although the employer may be engaged in what has been defined as interstate commerce." (Emphasis supplied).

In its opinion in this case it proceeds on the same false premise. The Wisconsin court said in commenting upon its opinion in *International Union v. Wisconsin Employment Relations Board*, supra: (R. 63)

> "We there concluded that the *Bethlehem* Case had simply held that the National Labor Relations Board in the instant Case 'had exercised the jurisdiction delegated to it under the federal act by declining to designate the foremen as a bargaining unit. The declination was an exercise of its jurisdiction, just as much as granting it would have been.' We adhere to this determination. The *Bethlehem* Case has limited the case-by-case doctrine commonly attributed to the Wisconsin decisions only to the extent of holding that where there has been a valid general exercise of its administrative power by the National Labor Relations Board neither repugnant provisions of the state law nor repugnant policies of the state board are effective to defeat the purpose and policy of the exercise."

This court in the *Bethlehem* Case did not place its decision on such narrow grounds. Its statement of the facts does not indicate that the foremen had applied to the National Board but implies they had not so applied because the existing policy of the Board frustrated them; they were frustrated not by a denial of an application but by what the court describes as an existing "policy" and the court based its decision not upon the fact that an application had

been made to the National Board and its denial, and not upon any specific conflict between the policies of the two boards, (in fact they were consistent at the time of the hearing in the case) but upon the principle that there was no room for the operation of state authority where both the state and federal statutes regulate the same relationship involving the same employers and the same employees. In other words, as we understand it, this court's decision was based upon the fact that the federal law applied and not that the board operating under that federal law had already acted in that specific case.

The Wisconsin court says that the question involved in this case is whether there was an intervention by the National Board when it conducted an election and designated the bargaining agent which would oust the state of jurisdiction to determine an unfair labor practice under a contract negotiated with a representative following the election. It proceeds to say: (R. 64)

> "Upon consideration we adhere to the view that the mere certificate of a union as a bargaining unit in a particular plant is not such a general assumption of jurisdiction over all of the employment relations of the company as would oust the state board of all jurisdiction. We refrain from expressing any opinion as to the extent to which it does oust the state board in the field that might be regarded as collective bargaining."

This court after eliminating the problem such as was presented in *Allen Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, and confining its discussion to the situations such as that here presented where state and federal legislation has "laid hold of the same relationship for regulation" says "the federal board

has jurisdiction of the industry in which these particular employers are engaged and has asserted control of their labor relations in general," and concludes that therefore it was beyond the power of New York State to apply its policy. The Supreme Court of the State of New Hampshire recognized that conflict in passing upon the unfair labor practice provisions of a similar act in New Hampshire which it was claimed conflicted with the Labor Management Relations Act of 1947. Under the latter law the inclusion of union security provisions now requires the affirmative vote of 51% of the employees and as in Wisconsin the New Hampshire Act required a 66-2/3% vote of approval. In striking down the state law as in conflict with the federal law the New Hampshire court said:

> "A comparison of those provisions with those of the Taft-Hartley Law dealing with unfair labor practices (s. 8), demonstrates that the two acts deal with the same subject matter in much the same way. There are, however, many conflicts between the provisions of the Taft-Hartley Act and the Willey Act * * *. In regard to the union shop under which an employer may hire non-union men of his own selection who, after a probationary period of employment must become union members as a condition of further employment, the Taft-Hartley Act permits such agreements when a majority of employees vote in favor of it, while the Willey Bill requires a two-thirds majority to validate such contracts. Numerous other inconsistencies between the two acts are pointed out in the excellent brief of the petitioners.
>
> "The Constitution of the United States gives Congress jurisdiction over the entire field of interstate commerce, and since Congress has already pre-empted the subject of labor management relations within the

field of interstate commerce, it follows from the paramount character of its authority that state regulation of the subject matter is excluded." *International Union of Teamsters, etc. v. Riley*, 59 A. 2d 476. (1948).

In *International Union v. Wisconsin Employment Relations Board*, 250 Wis. 550, 28 N. W. 2d 254, (1947) the court said that the principle of the *Bethlehem* case did not apply to the problem there at hand because:

> "In the first place, no application has been made to the National Labor Relations Board to exercise any jurisdiction of the *dispute here involved*. The National Labor Relations Board not having exercised any jurisdiction of *such labor dispute* the state board may exercise jurisdiction of it. No conflict is here involved. There was a direct conflict in the *Bethlehem* Case. The National Labor Relations Board had determined that foremen could not form a unit for collective bargaining and the state board said that they could form such a unit." (Emphasis supplied).

In *La Crosse Telephone Co. v. Wisconsin Employment Relations Board*, 251 Wis. 583, 30 N. W. 2d 241 (1947) the Wisconsin court says:

> "But, although the National Board's power over that subject is paramount, it is not exclusive in such a case as we have here, until the federal power is exercised or jurisdiction thereto is taken *as to particular employees*." (Emphasis supplied).

The position of the Wisconsin court was made clear in *International Union v. Wisconsin Employment Relations Board*, 250 Wis. 550, 28 N. W. 2d 254, when after discussing in detail the effect of the *Bethlehem* Case the court says:

> "But however that may be, if the Wisconsin Employment Relations Board is to be in effect abolished by the judgment of a court that judgment will have to be rendered by the supreme court of the United States."

The jurisdiction of the State was ousted when the National Labor Relations Board took jurisdiction of the labor relations of Algoma Plywood & Veneer Company in general, by conducting an election pursuant to petition therefor and certifying the bargaining agent with whom the employer has since negotiated its labor contracts. This principle was firmly established by this court in the *Bethlehem Steel Company* Case. Because of the nature of the activities of the employer, the National Labor Relations Board, in addition to asserting its jurisdiction, had jurisdiction of the industry in which these particular employees are engaged. Therefore, even in the absence of a specific assertion, the jurisdiction of the state board was ousted and its attempt to apply its policy was improper.

Hence, because (1) the National Act conferred on the National Board exclusive authority to deal with employer unfair labor practices under the Act, (2) the Wisconsin Employment Peace Act was repugnant to the National Labor Relations Act with respect to what constitutes an unfair labor practice by an employer, and (3) the jurisdiction of the State of Wisconsin was ousted by an assertion of jurisdiction by the National Labor Relations Board which had jurisdiction over the labor relations of the parties, the assertion by the State of Wisconsin of jurisdiction and the application of its conflicting policy to the employer and its

employees was in excess of its authority. For these reasons the decisions of the courts below should be reversed.

Respectfully submitted,

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